

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
BEAUMONT DIVISION

CHARLES ELVIS RABY §
VS. § CIVIL ACTION NO. 1:07-CV-305
DIRECTOR, TDCJ-CID §

MEMORANDUM ORDER OVERRULING PETITIONER'S OBJECTIONS AND ADOPTING
THE MAGISTRATE JUDGE'S REPORT AND RECOMMENDATION

Petitioner Charles Elvis Raby, a prisoner confined in the Texas Department of Criminal Justice, Correctional Institutions Division, brought this petition for writ of habeas corpus pursuant to 28 U.S.C. § 2254.

The court ordered that this matter be referred to the Honorable Keith F. Giblin, United States Magistrate Judge, at Beaumont, Texas, for consideration pursuant to applicable laws and orders of this court. The magistrate judge has submitted a Report and Recommendation of United States Magistrate Judge. The magistrate judge recommends dismissing the petition as barred by the statute of limitations.

The court has received and considered the Report and Recommendation of United States Magistrate Judge, along with the record, pleadings, and all available evidence. Petitioner filed objections to the magistrate judge's Report and Recommendation. The court has conducted a *de novo* review of the objections in relation to the pleadings and the applicable law. *See* FED. R. CIV. P. 72(b).

Petitioner contends this petition is timely because his state habeas application was considered filed as of the date he gave it to prison officials for mailing, not the date on which it was received

by the state court. This argument lacks merit. The United States Court of Appeals for the Fifth Circuit recently held that the prison mailbox rule does not apply to a state habeas application under Texas law. *Howland v. Quarterman*, 507 F.3d 840, 844-45 (5th Cir. 2007). Petitioner has not demonstrated exceptional circumstances warranting equitably tolling the limitations period. Therefore, after careful consideration, the court concludes the objections are without merit.

ORDER

Accordingly, petitioner's objections are **OVERRULED**. The findings of fact and conclusions of law of the magistrate judge are correct, and the report of the magistrate judge is **ADOPTED**. A final judgment will be entered in this case in accordance with this memorandum order.

So **ORDERED** and **SIGNED** this **19** day of **March, 2008**.



Ron Clark, United States District Judge